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10/552,428	10/07/2005	Douglas John Hughes	282318-00012	6683
3705	7590	04/11/2007	EXAMINER	
ECKERT SEAMANS CHERIN & MELLOTT			KHAN, AMINA S	
600 GRANT STREET			ART UNIT	PAPER NUMBER
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PITTSBURGH, PA 15219				
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		04/11/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No.	Applicant(s)	
	10/552,428	HUGHES, DOUGLAS JOHN	
	Examiner	Art Unit	
	Amina Khan	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 January 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1 and 4-19 is/are pending in the application.
 - 4a) Of the above claim(s) 11-14 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4-10 and 15-19 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application
- 6) Other: _____

DETAILED ACTION

1. This office action is in response to applicant's amendments filed on January 22, 2007.
2. Claims 1,4-10 and 15-19 are pending. Claims 2 and 3 have been cancelled. Claims 11-14 have been withdrawn due to a non-elected invention. Claims 1,4,7 and 8 have been amended.
3. The objection to the specification is maintained for the reasons set forth in the previous office action.
4. All pending rejections are recited below. Rejections not cited below have been withdrawn.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
6. Claims 9,10,17 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 9 and 10 depend from claim 2, which

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has been cancelled. For examination purposes the examiner interpreted that the claims were dependent on claim 15.

Claims 17 and 19 are also rejected for being dependent on the rejected claims and inheriting the same deficiency.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1,4-7,10,15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Kosaka (JP 357008272).

Kosaka teaches inks for ball-point pens comprising humic acid, water, surfactant and a water-soluble dye such as CI Acid blue 9 (abstract, page 499, column 2, line 6).

Even though Kosaka does not teach a foliage colorant use of his composition, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393. Furthermore, the limitations spraying on foliage, imparting green color to foliage, or in a form suitable for spray application to turf are simply intended uses and were given little patentable weight in the instant composition claims. All the composition component limitations are met and if applied to foliage or turf would inherently meet these limitations.

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Accordingly, Kosaka anticipates the material limitations of the instant claims.

9. Claims 1,4-8,15 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Hamamoto (JP 361106683).

Hamamoto teaches inks for ball-point pens comprising 0.01-3 wt% humic acid, water and 1-15 wt% water-soluble dye such as Acid Blue dyes 1,9 and 90 (abstract; page 630, column 2, paragraph 1; page 631, column 2, paragraph 1).

Even though Hamamoto does not teach a foliage colorant use of his composition, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393. Furthermore, the limitations spraying on foliage, imparting green color to foliage, or in a form suitable for spray application to turf are simply intended uses and were given little patentable weight in the instant composition claims. All the composition component limitations are met and if applied to foliage or turf would inherently meet these limitations.

Accordingly, Hamamoto anticipates the material limitations of the instant claims.

10. Claims 1 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by Dainichiseika Color & Chemical Manufacturing (JP 05065425).

Dainichiseika Color & Chemical Manufacturing teaches red azo colorant compositions comprising 0.1-5 wt% humic acid, water and soluble azo dye (abstract).

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Even though Dainichiseika Color & Chemical Manufacturing does not teach a foliage colorant use of his composition, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393. Furthermore, the limitation of spraying on foliage is simply an intended use and was given little patentable weight in the instant composition claims. All the composition component limitations are met and if applied to foliage or turf would inherently meet these limitations.

Accordingly, Dainichiseika Color & Chemical Manufacturing anticipates the material limitations of the instant claim.

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 1,4-10,15,17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riedel et al. (US 2002/0182234).

Riedel et al. teach compositions comprising 0.001-30% humic acid antioxidants to protect skin against oxidative stress (page 5, paragraph 0054; page 6, paragraphs 0056 and 0057), urea and iron sources for moisturizing purposes (page 9, paragraphs 0110 and 0111), 0.1-30% dyes such as acid green 1 and acid blue 1 or 62 to provide decorative cosmetics (page 9, paragraph 0111 and table; pages 10 and 11, table; page

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13, paragraph 0126), surfactants for dispersing and stabilization of cosmetics (page 1, paragraph 0005) and water (page 17, paragraph 0190).

Reidel et al. does not teach all the instantly claimed components in a single composition.

Even though Reidel et al. does not teach a colorant use of his composition, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393. It would further have been obvious to select the components taught by Reidel et al. to arrive at the instantly claimed invention because Reidel et al. teach all the instantly claimed components as useful in providing effective cosmetic compositions with stability, moisturizing and antioxidant properties to skin and decorative aesthetics. Reidel teaches all the instant components as useful in providing effective cosmetics.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the Reidel et al. range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In addition, a *prima facie*

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case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

All disclosures of the prior art, including non-preferred embodiment, must be considered. See *In re Lamberti and Konort*, 192 USPQ 278 (CCPA 1967); *In re Snow* 176 USPQ 328(CCPA 9173). Nonpreferred embodiments can be indicative of obviousness, see *Merck & Co. v. Biocraft Laboratories Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1989); *In re Lamberti*, 192 USPQ 278 (CCPA 1976); *In re Kohler*, 177 USPQ 399. A reference is not limited to the working examples, see *In re Fracalossi*, 215 USPQ 569 (CCPA 1982).

Furthermore, the limitations spraying on foliage, imparting green color to foliage, or in a form suitable for spray application to turf are simply intended uses and were given little patentable weight in the instant composition claims. All the composition component limitations are met and if applied to foliage or turf would obviously meet these limitations.

13. Claims 1,4-8,10,15 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidenfelder et al. (US 2003/0118621).

Heidenfelder et al. teach compositions comprising 0.001-30% humic acid antioxidants (page 11, paragraph 0175; page 12, paragraphs 0175-0176), iron compounds (page 21, paragraph 0316), 0.1-30% dyes such as acid green 1 and acid

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blue 1 or 62 (page 21, paragraph 0316 and table; page 22, table, page 24, paragraph 0330), surfactants (page 18, paragraph 0268) and water (page 5, paragraph 0080; page 12, paragraph 0180).

Heidenfelder et al. does not teach all the instantly claimed components in a single composition.

Even though Heidenfelder et al. does not teach a colorant use of his composition, the two different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393. It would further have been obvious to select the components taught by Heidenfelder et al. to arrive at the instantly claimed invention because Heidenfelder et al. teach all the instantly claimed components as useful in providing effective cosmetic compositions.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the Heidenfelder et al. range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In addition, a *prima facie*

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case of obviousness exists because the claimed ranges “overlap or lie inside ranges disclosed by the prior art”, see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

All disclosures of the prior art, including non-preferred embodiment, must be considered. See *In re Lamberti* and *Konort*, 192 USPQ 278 (CCPA 1967); *In re Snow* 176 USPQ 328(CCPA 9173). Nonpreferred embodiments can be indicative of obviousness, see *Merck & Co. v. Biocraft Laboratories Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1989); *In re Lamberti*, 192 USPQ 278 (CCPA 1976); *In re Kohler*, 177 USPQ 399. A reference is not limited to the working examples, see *In re Fracalossi*, 215 USPQ 569 (CCPA 1982).

Furthermore, the limitations spraying on foliage, imparting green color to foliage, or in a form suitable for spray application to turf are simply intended uses and were given little patentable weight in the instant composition claims. All the composition component limitations are met and if applied to foliage or turf would inherently meet these limitations.

14. Claims 1,4-8,10,15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Osada (US 5,993,098) in view of Kosaka (JP 357008272), as applied to the claims above.

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Osada, teaches ball-point pen inks (column 2, lines 40-45) comprising water (column 3, lines 10-15), surfactants (column 3, lines 64-67), and colorants such as Acid Blue 1,9,62 or Acid Green (column 4, lines 45-60).

Osada does not teach humic acid.

Kosaka teaches adding humic acid to ball point pen inks for providing inks with good transfer printing and high writing performance (abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the inks taught by Osada by incorporating the humic acids taught by Kosaka because Kosaka teaches these ingredients as important in providing ball point pens good transfer printing and high writing performance (abstract). It is *prima facie* obvious to combine the compounds, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In re Pinten*, 173 USPQ 801, and *In re Susi*, 169 USPQ 423 when ingredients are well known and combined for their known properties, the combination is obvious absent unexpected results. A person of ordinary skill in the pen ink art would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results.

Regarding the percentage limitations, it would have been obvious to optimize the concentrations of the humic acid and colorant to the values instantly claimed because optimization of a result effective variable only requires routine skill in the art.

Furthermore, the limitations spraying on foliage, imparting green color to foliage, or in a form suitable for spray application to turf are simply intended uses and were

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given little patentable weight in the instant composition claims. All the composition component limitations are met and if applied to foliage or turf would inherently meet these limitations.

15. Claims 1,4-10,15,16 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Inoue et al. (US 4,545,818) in view of Kosaka (JP 357008272), as applied to the claims above.

Inoue et al., teaches ball-point pen inks (column 5, lines 50-55) comprising water (column 3, lines 10-15), surfactants (column 3, lines 20-30), urea (column 3, lines 5-6) and colorants such as Acid Blue 9 (column 3, line 15).

Inoue et al. do not teach humic acid.

Kosaka teaches adding humic acid to ball point pen inks for providing inks with good transfer printing and high writing performance (abstract).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the inks taught by Inoue by incorporating the humic acid taught by Kosaka because Kosaka teaches adding humic acid to ball point pen inks for providing inks with good transfer printing and high writing performance. It is *prima facie* obvious to combine the compounds, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In re Pinten*, 173 USPQ 801, and *In re Susi*, 169 USPQ 423 when ingredients are well known and combined for their known properties, the combination is obvious absent unexpected results. A person of ordinary skill in the pen ink art would expect combinations of these

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materials to behave in the same fashion as the individual materials, absent unexpected results.

Regarding the percentage limitations, it would have been obvious to optimize the concentrations of the humic acid and colorant to the values instantly claimed because optimization of a result effective variable only requires routine skill in the art.

Furthermore, the limitations spraying on foliage, imparting green color to foliage, or in a form suitable for spray application to turf are simply intended uses and were given little patentable weight in the instant composition claims. All the composition component limitations are met and if applied to foliage or turf would inherently meet these limitations.

16. Claims 9,10 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hamamoto (JP 361106683) as applied to the claims above and further in view of Inoue et al. (US 4,545,818).

Hamamoto is relied upon as set forth above. Hamamoto does not teach compositions comprising surfactants and fertilizers.

Inoue et al., in the analogous art of ball-point pen inks (column 5, lines 50-55), teaches inks comprising water (column 3, lines 10-15), surfactants (column 3, lines 20-30), urea (column 3, lines 5-6) and colorants such as Acid Blue 9 (column 3, line 15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the inks taught by Hamamoto by incorporating the surfactants and urea taught by Inoue et al. because Inoue et al. teach these ingredients

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as important in providing ball point pens having excellent flowability, rapid write ability, and cap-off properties (column 6, lines 45-55). It is *prima facie* obvious to combine the compounds, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In re Pinten*, 173 USPQ 801, and *In re Susi*, 169 USPQ 423 when ingredients are well known and combined for their known properties, the combination is obvious absent unexpected results. A person of ordinary skill in the pen ink art would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results.

17. Claims 1,9 and 15-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Drahos et al. (US 6,659,425) in view of Hawkins et al. (US 4,191,550).

Drahos et al. teach foliage sprays comprising humic or fulvic acids (column 3, lines 10-25), urea, iron EDTA (column 11, table 6), and water (column 7, lines 20-25).

Drahos et al. do not teach dyes.

Hawkins, in the analogous art of foliar sprays, teach adding water-soluble dyes to the spray composition for imparting a characteristic color (column 5, example 1).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the foliage sprays taught by Drahos et al. by incorporating the water-soluble dyes taught by Hawkins because Hawkins teaches that the dyes are added conventionally to impart a characteristic color to the spray. It is *prima facie* obvious to combine the two compounds, each taught for the same purpose, to yield a third composition for that very purpose. *In re Kerkhoven*, 205 USPQ 1069, *In*

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re Pinten, 173 USPQ 801, and *In re Susi*, 169 USPQ 423 when ingredients are well known and combined for their known properties, the combination is obvious absent unexpected results. A person of ordinary skill in the foliage spray would expect combinations of these materials to behave in the same fashion as the individual materials, absent unexpected results.

Response to Arguments

18. Applicant's arguments filed regarding Kosaka, Hamamoto, Dainichiseika Color and Chemical Manufacturing, Riedel, Heidenfelder and Osada have been fully considered but they are not persuasive. Applicant argues that all these references relate either to cosmetic compositions, inks or toners and are non-analogous art. The examiner asserts that thought the references don't teach foliage colorant uses of the compositions, the different intended uses are not distinguishable in terms of the composition, see *In re Thuau*, 57 USPQ 324; *Ex parte Douros*, 163 USPQ 667; and *In re Craige*, 89 USPQ 393. Furthermore, the limitations spraying on foliage, imparting green color to foliage, or in a form suitable for spray application to turf are simply intended uses and were given little patentable weight in the instant composition claims. All the composition component limitations are met and if applied to foliage or turf would inherently/obviously meet these limitations.

Regarding Riedel, applicant argues no motivation exists to select the instantly claimed components. The examiner respectfully disagrees. Riedel et al. teach all the instantly claimed components as useful in providing effective cosmetic compositions

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with stability (surfactants), moisturizing (urea) and antioxidant (humic acid) properties to skin and decorative (acid dyes) aesthetics. Reidel teaches all the instant components as useful in providing effective cosmetics.

Regarding Heidenfelder, applicant argues no motivation exists to select the instantly claimed components. The examiner respectfully disagrees. Heidenfelder et al. teach all the instantly claimed components as advantageous in providing effective cosmetic compositions with emulsification (surfactants) to compositions and antioxidant (humic acid) properties to skin and some additives are customary (water) and advantageous (acid dyes). Heidenfelder teaches all the instant components as useful in providing effective cosmetics.

Conclusion

19. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amina Khan whose telephone number is (571) 272-5573. The examiner can normally be reached on Monday through Friday, 8:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



AK
April 7, 2007



LORNA M. DOUYON
PRIMARY EXAMINER